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CALL FOR COMMENTS: REVISED DRAFT GENERAL COMMENT NO. 37 ON ARTICLE 21 (RIGHT OF PEACEFUL ASSEMBLY) OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The Danish Institute for Human Rights welcomes the call for comments on the revised draft General Comment No. 37 on article 21 (Right of peaceful assembly) of the International Covenant on Civil and Political Rights.

The Institute would like to comment on the following points:

REGULATION OF DIGITAL TECHNOLOGY COMPANIES

In paragraph 54 it is stated that “Central to the realisation of the right of peaceful assembly is the requirement that any restrictions must in principle be content neutral, and thus not be related to the message conveyed by the assembly.”

The Institute would like to refer to the report on the rights to freedom of peaceful assembly and of association in the digital age submitted to the Human Rights Council by the Special Rapporteur.¹ In his report, the Special Rapporteur address the human rights concerns raised by the way in which content is moderated by online platforms under their own community standards. The content policies of social media companies reflect varying interpretations of what is acceptable expression and behaviour, which may not be compliant with international human rights standards and norms.² Therefore, the Special Rapporteur recommend that companies should introduce independent oversight mechanisms to

¹ Human Rights Council, Rights to freedom of peaceful assembly and of association – Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association, 17 May 2019, A/HRC/41/41.

² Ibid., paragraph 59.

monitor the outcome of content moderation decisions, and that states should consider regulation that requires such independent oversight.³

- The Institute recommends that the revised draft, based on the recommendations made by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, address how digital technology companies should be regulated in the context of freedom of peaceful assembly and association.

THE USE OF IDENTIFYING TECHNOLOGY

In paragraph 72 it is stated that “The mere fact that assemblies take place in public does not mean that participants’ privacy is not capable of being infringed, for example, by facial recognition and other technologies that can identify individual participants in a crowd. The same applies to the monitoring of social media to glean information about participation in peaceful assemblies. Independent scrutiny and oversight must be exercised over the collection of personal information and data of those engaged in peaceful assemblies.”

The Institute would once more like to refer to the report on the rights to freedom of peaceful assembly and of association in the digital age submitted to the Human Rights Council by the Special Rapporteur.⁴ The Special Rapporteur recommends the prohibition of the use of surveillance techniques for the indiscriminate and untargeted surveillance of those exercising the right to peaceful assembly and association, both in physical spaces and online. Surveillance against individuals exercising their rights of peaceful assembly and association can only be conducted on a targeted basis, where there is a reasonable suspicion that participants are engaging in or planning to engage in serious criminal offences, and under the very strictest rules, operating on principles of necessity and proportionality and providing for close judicial supervision.⁵

Presently, the consequences of the use of facial recognition in a human rights perspective is widely debated in international organisations such as the European Union, the Council of Europe and the United Nations.⁶

³ Ibid., paragraph 88.

⁴ Ibid.

⁵ Ibid., paragraph 57 and 76.

⁶ See European Union Agency for Fundamental Rights, Facial recognition technology: fundamental rights considerations in the context of law enforcement, 2019, available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-facial-recognition-technology-focus-paper.pdf; Council of Europe Consultative Committee of the Convention for the Protection of Individuals with regard to automatic processing of

- The Institute recommends that the revised draft further elaborates on how states parties should regulate the use of technologies that can identify individual participants in a crowd.

Yours sincerely,

Anncathrine Carl

ADVISER

personal data – Convention 108, Facial recognition: situations and issues, 5 September 2019, T-PD(2019)05, available at: <https://rm.coe.int/0900001680973a5d>; United Nations Human Rights Council, Surveillance and human rights, 28 May 2019, A/HRC/41/35, available at: <https://undocs.org/A/HRC/41/35>.